

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #06-32**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Whether certain gases fall under the prohibition against local taxation found in Tenn. Code Ann. § 67-6-704

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[TAXPAYER] is a distributor of industrial, medical and specialty gases and related equipment and supplies. The Taxpayer's customers engage in a wide variety of business activities, such as manufacturing, farming, health care, contracting, and fabrication. The

Taxpayer is not a utility company, and its gases are not metered or delivered by pipeline; instead, they are typically provided in specially designed, returnable cylinders and tanks. The gases sold by the Taxpayer include, but are not limited to, oxygen (both medical and industrial), nitrogen, propane, argon, acetylene, carbon dioxide, and nitrous oxide.

## **ISSUES**

1. May the gases sold by Taxpayer, as described above, fall within the definition of either natural or artificial gas and qualify for the exemption from the local sales and use tax afforded pursuant to Tenn. Code Ann. § 67-6-704? If yes, what general rules should be applied in determining which gases qualify?
2. A repairperson purchases a mixture of acetylene and oxygen for use in a welding process. As used in this application:
  - a. The acetylene is an energy or fuel gas which burns during the welding process.
  - b. The oxygen is not a fuel gas. However, when used in a welding application, the oxygen chemically combines with the fuel gas (in this case, acetylene) to support and accelerate combustionAre the acetylene and oxygen exempted from the imposition of the local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704?
3. A for-profit medical center purchases nitrogen, which will be used in providing medical services. Is the nitrogen exempted from the imposition of the local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704?
4. A repairperson purchases argon for use in a welding process. The argon does not burn; it is an inert, shielding gas. Shielding gases are used to protect the weld area from atmospheric gases and water vapor, which could reduce the quality of the weld or make the welding process more difficult. Is the argon exempted from the imposition of the local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704?
5. A manufacturer purchases propane, which will be used to power forklifts at his industrial site. The forklifts are not used directly in the production process. Is the propane that will be used as a fuel to power the forklifts exempted from the imposition of the local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704?

## **RULINGS**

1. Some of the gases sold by the Taxpayer are exempt; please see the analysis below for more information.
2. Yes.

3. The nitrogen may be exempt; please see the analysis below for more information.
4. No.
5. Yes.

## ANALYSIS

1. Tenn. Code Ann. § 67-6-704 exempts certain energy fuels from local sales and use tax:

No county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil or steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government.<sup>1</sup>

Industrial gases which are to be used by the consumer as energy fuels for welding, heating, cooling, cooking, and other similar activities, are exempt from local sales and use tax pursuant to Tenn. Code Ann. § 67-6-704. If the gas is capable of being used as an energy fuel (i.e. it is combustible or flammable), and if it is intended for use as an energy fuel, the local sales and use tax will not apply. Oxygen, acetylene and nitrogen are examples of such energy fuel gases. However, gases such as argon, helium, compressed air and other inert gases do not qualify for the exemption and are subject to local sales and use tax. Mixed gases will be exempt from local sales and use tax if the mixture is combustible or flammable when they are sold to a person for use as an energy fuel.<sup>2</sup>

2. Acetylene and oxygen, when mixed together for use as an energy fuel are exempt from local sales and use tax.
3. Nitrogen will be exempt from local sales and use tax if it is intended for use as an energy fuel in the provision of medical services. However, if it is not used as an energy fuel and is used for a different purpose, it will not be exempt.
4. Argon will not be exempt from local sales and use tax. Gases such as argon, helium, compressed air and other inert gases are subject to local sales and use tax.

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<sup>1</sup> After July 1, 2007, Tenn. Code Ann. § 67-6-704 will read: “No county or incorporated city or town is authorized to levy a sales or use tax on the sale, purchase, use, consumption or distribution of energy in the form of steam or chilled water sold by an energy resource recovery facility operated in a county with a metropolitan form of government.”

<sup>2</sup> Please note that Tenn. Code Ann. § 67-6-206 provides a reduced rate or total exemption for certain energy fuels, including gases, when sold to and used by manufacturers.

5. Propane will be exempt from local sales and use tax when it is used as an energy fuel. In this case, the propane combusts to power a forklift so it qualifies as an energy fuel.

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APPROVED: Loren L. Chumley  
Commissioner

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